

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5925 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

T.M.KHAMBHOLJA

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR RJ OZA for Petitioner

MS MANISHA LAVKUMAR instructed by M/S MG DOSHIT & CO
for Respondents.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/08/1999

ORAL JUDGEMENT

In this petition under Art. 226 of the Constitution, the petitioner who at the relevant time was serving as a Police Inspector, has challenged the order dt. 28/5/1986 at Annexure:A passed by the Director General of Police & Inspector General of Police, Gujarat State prematurely retiring the petitioner from service in the public interest under Rule 161(1)(AA)(i)(1) of the Bombay Civil Service Rules Volume. I.

The petitioner was paid three months pay and allowances in lieu of the notice required under the Rules. Pursuant to the said order, the petitioner was relieved from service with effect from 6-6-1986.

2. The petitioner was appointed as a Police Constable in the year 1951 and promoted as a Head Constable in the year 1955. The petitioner was selected for the promotion to the post of the Police Sub Inspector in the year 1959, and was given posting as the Police Sub Inspector and was sent for training to the Police Training School. After successful completion of the training period, the petitioner was appointed as a Police Sub Inspector with effect from July 1, 1961. The petitioner was superseded in the matter of promotion to the posts of Police Inspector in the year 1980 when 74 Police Sub-Inspectors who were junior to the petitioners were promoted to the posts of the Police Inspector. Therefore, the petitioner had filed Special Civil Application No. 4103 of 1982. Ultimately, the above petition was partly allowed and the authorities were directed to consider the petitioner's case for promotion to the post of Police Inspector with effect from 1980 with all consequential benefits. In February, 1984, the petitioner was promoted to the post of Police Inspector with effect from 25-1-1980. The petitioner's case is that after the petitioner's promotion as Police Inspector, so also prior to his promotion, several commendatory notes and prizes were given by the District Superintendent of Police under whom the petitioner was previously working.

3. The petitioner has challenged the order of compulsory retirement on the following grounds :-

The petitioner, having completed 55 years of age on 8/1/1985, was to reach the age of superannuation on 8/1/1988, and when hardly 18 months were left for his retirement on the date of superannuation, the petitioner was ordered to be compulsory retired. The learned counsel for the petitioner has firstly pointed out that the grounds given by the respondents in the reply affidavit are the adverse remarks passed during the period between 1967 and 1980 but such adverse remarks could not have been taken into consideration, since the petitioner was promoted thereafter. In support of his arguments, the learned counsel for the petitioner placed reliance on two decisions of the Apex Court in AIR 1987 SC 948 and AIR 1992 SC 1020.

Secondly, it is submitted that the ground given by the respondents is that the petitioner did not show positive merits but the commendatory notes and prizes given by the officer under whom the petitioner was working, show that the petitioner was rendering satisfactory services and there were no adverse remarks in the confidential reports of the petitioner after 1980.

4. On the other hand, the learned AGP submits that as per the Government instructions, the confidential reports for the last about 8 to 10 years are required to be considered, and therefore, the respondents were justified in considering the adverse remarks even for the period prior to the petitioner's promotion as Police Inspector. The remarks clearly showed that the petitioner was avoiding responsibilities and had no control over his subordinates and was not at all fit for a responsible post.

Secondly, it is submitted that in any case, in the petitioner's confidential reports for the subsequent period i.e. after his promotion did not show that the petitioner possessed good record and positive merits which is necessary to continue the petitioner in service beyond the age of 55 years.

5. Having heard the learned counsel for the parties, the Court finds considerable force in the submissions made by the learned counsel for the petitioner. It transpires from the record that the petitioner was permitted to cross the efficiency bar in the year 1980 when he was working as Police Sub-Inspector and the petitioner was also promoted to the post of Police Inspector with effect from 25.1.1980. Having permitted the petitioner to cross the efficiency bar and having promoted the petitioner to the post of Police Inspector in 1980 which could not have been done without considering the petitioner meritorious as per the principles laid down by the Apex Court in the case of Brij Mohan Singh Chopra Vs. State of Punjab, reported in AIR 1987 SC 948 and in Baikuntha Nath and another vs Chief District Magistrate, Baridapada and another AIR 1992 SC 1020, the authorities could not have taken into consideration the adverse remarks passed for the period prior to the petitioner's promotion to the post of the Police Inspector. If a man was found fit for promotion to the higher post, his poor performance on the lower post prior to the date of his promotion could not have been taken into consideration against the officer for branding him as inefficient or deadwood.

6. The learned AGP would still contend that even after the promotion, the petitioner's performance was required to be reassessed and on reassessment, the petitioner was not found positively fit and meritorious. Under such circumstances, the authority could compulsorily retire the petitioner prematurely. As per the settled legal position, the Government has power to compulsorily retire an officer in the public interest, in order to weed out the officers who are corrupt or with doubtful integrity or those who have become deadwood.

7. In the present case, nothing is shown from the petitioner's confidential reports which would go to show that the petitioner could be considered to be an officer with doubtful integrity or deadwood between the years 1980 and 1986. On the contrary, the commendatory notes and prizes given by the District Superintendent of Police under whom the petitioner was working would go to show that the petitioner was discharging his duties in such a manner that he received commendatory notes and prizes from his immediate superior officer.

It was urged that even after his getting such commendatory notes and prizes, the petitioner's performance in other cases may not be such as to justify his continuance in service, but there is nothing on record to show that the petitioner was such an officer who was required to be weeded out after completion of 55 years of age.

8. The next question is as to what relief should be granted to the petitioner. During pendency of the petition, the petitioner has already attained the age of 58 years, and therefore, there is no question of passing any order of reinstatement. The learned counsel for the petitioner has prayed for full back wages on the ground that the petitioner was ready and willing to serve but the respondent passed the impugned order which has been found to be illegal.

The learned AGP on the other hand has submitted that there is nothing on record to show that the petitioner has not accepted any gainful employment during the relevant period.

9. In the facts and circumstances of the case, it is not possible to believe that during the relevant period, the petitioner might not have earned some gainful employment because the petitioner had to maintain his family and in view of the fact that the petition has been pending for the last 13 years, the Court would not like

any inquiry to be made into that factual aspect of the matter at this stage, but the respondents shall pay the petitioner 75% of the back wages for the period between 6-6-1986 and 8-1-1988 after deducting three months salary and allowances which were paid to the petitioner at the time of compulsory retirement.

10. In the result, the petition is partly allowed. The impugned order dt. 28th May, 1986 (Annexure:A) is declared as illegal and is quashed and set aside. The respondent shall pay the petitioner 75% of the salary and allowances for the period between 6-6-1986 and 8-1-1988 after deducting three months salary and allowance already paid to the petitioner at the time of compulsory retirement and the petitioner shall be deemed to have been continued in service as a Police Inspector till the age of superannuation i.e. 8-1-1988.

11. Rule is made absolute to the above extent with no order as to costs.

Date:12/8/1999. -----
(ccshah)